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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE, et al.,)	
)	
Plaintiffs,)	Case No. 2:15-cv-01045-RFB-PAL
)	
vs.)	Las Vegas, Nevada
)	July 28, 2015
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	MOTIONS HEARING
)	
Defendants.)	

TRANSCRIPT OF PROCEEDINGS
THE HONORABLE PEGGY A. LEEN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: See Next Page

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1 LAS VEGAS, NEVADA; TUESDAY, JULY 28, 2015; 10:02 A.M.

2 --oOo--

3 P R O C E E D I N G S

4 COURTROOM ADMINISTRATOR: Your Honor, we are now
5 calling the motion hearing in the matter of Cung Le, et al.
6 versus Zuffa, LLC. The Case No. is 2:15-cv-1045-RFB-PAL.
7 Beginning with plaintiff's counsel, counsel, please state your
8 names for the record.

9 MR. SPRINGMEYER: Good morning, Your Honor. Don
10 Springmeyer from Wolf Rifkin for the plaintiffs. With me is
11 Eric Cramer from Berger & Montague and Ben Brown from Cohen
12 Milstein.

13 MR. CRAMER: Good morning.

14 COURTROOM ADMINISTRATOR: And defense counsel, please.

15 MR. ISAACSON: Bill Isaacson, Boies, Schiller &
16 Flexner, for the defendant.

17 MR. COVE: Good morning, Your Honor. John Cove, Boies,
18 Schiller & Flexner, for the defendant.

19 MR. WILLIAMS: Good morning, Your Honor. Colby
20 Williams, Campbell & Williams, for the defendant.

21 THE COURT: This is on calendar on two separate
22 motions. I'll take the first one. There has been no
23 opposition, and it was filed as an unopposed motion for
24 appointment of interim counsel. Are there any parties in the
25 courtroom that wish to be heard in opposition to this motion?

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1 There being no response and good cause shown, the
2 unopposed motion to appoint interim co-lead class counsel and
3 interim liaison counsel is granted. I hope you weren't blushing
4 too much when you extolled your virtues, counsel.

5 All right. With respect to the -- and was there a
6 proposed order attached to the papers? I frankly don't recall.
7 I haven't --

8 MR. SPRINGMEYER: I think so, but I'm not positive.

9 THE COURT: All right. I'll double check, and if not,
10 I'll require you to submit a proposed order that is pretty and
11 official. Okay?

12 MR. SPRINGMEYER: Yes. Yes, Your Honor.

13 THE COURT: On the second motion on calendar, this is a
14 contested motion to stay discovery filed on behalf of the
15 defendants. I have read the moving and responsive papers, but,
16 movant, this is your opportunity to be heard. Who will be
17 arguing on behalf of the defendants?

18 MR. ISAACSON: I will, Your Honor, Bill Isaacson.

19 THE COURT: Yes, sir.

20 MR. ISAACSON: We've tried to consolidate our basic
21 points, Your Honor. I can hand that up.

22 THE COURT: I get a Gilbert outline for your arguments?

23 MR. ISAACSON: It is more pictures than words. So I
24 think it's -- it's different from Gilbert's, I hope.

25 Your Honor has said and other Courts have said that in

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1 this situation the guiding principle is really Rule 1. And
2 you're balancing two different things, the desire to move a case
3 forward and then the cost of discovery that's faced when you do
4 move the case forward. Obviously, we've filed a motion to
5 dismiss, and defense goal is to avoid unnecessary cost. The
6 Courts have recognized and the parties recognize the
7 practicalities of an antitrust case is that if discovery goes
8 forward in whole or in part we're talking about what the Ninth
9 Circuit has called prohibitive costs of an antitrust case,
10 millions of dollars.

11 And so you're basically, in reviewing the papers,
12 juggling those two different things. So I would initially point
13 to, as we've pointed in our papers, the discovery that the
14 plaintiffs seek to immediately go forward with. And we've
15 given --

16 THE COURT: The plaintiffs in their papers say that you
17 rejected any offer to try to negotiate a narrow scope of the
18 discovery in favor of filing this motion to stay. Is that
19 accurate?

20 MR. ISAACSON: We have had -- I wouldn't put it that
21 way, and so we have not -- we have been unable to reach
22 agreement. Any time both sides have been unable to reach
23 agreement, either side can say that.

24 I think there are things that can be done that don't
25 cost millions of dollars and that pave the way for eventual

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1 discovery, such as a protective order. We've sent over a draft
2 protective order. We can move forward with ESI protocol. We
3 can deal with written objections.

4 What we are essentially concerned with are two things.
5 One is taking on millions of dollars in costs, and the second
6 thing is giving the plaintiffs discovery to remedy a defective
7 complaint that -- to sort of come up with an actual complaint by
8 going through discovery.

9 THE COURT: It seems to be inconsistent with your
10 arguments. You're going to get a decision soon.

11 MR. ISAACSON: Well, we are hoping to get a decision
12 soon, and if we do get a decision soon --

13 THE COURT: Then that problem won't exist.

14 MR. ISAACSON: I agree. I agree. I have -- we are
15 here today in the hopes that that happens. And we are not
16 intending to inhibit said, you know, decline to meet and confer
17 about all of those different things I just -- that I just
18 listed.

19 If at some point we have to get to the point of
20 producing all of these years of financial records, itemized, as
21 plaintiffs keep asking for, and doing electronic discovery with
22 custodians, then we're talking about incurring lots of costs.
23 Hopefully we get notice of the hearing next week and we find out
24 one way or the other what's going to happen. And then this all
25 becomes a moot point, but we're here today without that

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1 knowledge.

2 So -- and -- so we are faced with requests that have
3 not been withdrawn or delayed. You know, there's been no offer
4 to say, We will forestall this until we hear from -- get a
5 ruling on the motion to dismiss. So we have the requests for
6 all of our financial information going back more than a decade,
7 and that includes -- we've highlighted some of it on the fourth
8 slide, Requests For Production No. 11, Total gate receipts
9 broken down by event, total merchandising receipts broken down
10 by event, total revenues for pay-per-view broadcasts, itemized.
11 And we list all of these things because this is going to be
12 quite a substantial effort if we have to move forward.

13 And our goal, which would be the goal of any business,
14 is having made a motion to dismiss that challenges the
15 sufficiency of what has been alleged is that we should not have
16 to take on those burdens.

17 So the standard before the Court, and the Court's
18 familiar with this, is would the motion potentially dispose of
19 the entire case or an issue in which discovery is sought, and
20 that bifurcated notion there of will it dispose of the case or
21 narrow the case is important because we are talking about very
22 broad discovery and narrowing the discovery would have an
23 important effect --

24 THE COURT: If the motion is granted in part and denied
25 in part, you agree that the district judge is likely to give

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1 them leave to amend?

2 MR. ISAACSON: There's liberal leave to amend, and --
3 but I don't -- and so I guess you say there's always likely to
4 be --

5 THE COURT: Do you really think the district judge is
6 going to grant your motion and dismiss this case with prejudice
7 finding that they can't state any claim on which relief may be
8 granted?

9 MR. ISAACSON: Dismiss without any leave? No, I say
10 judges ordinarily grant leave to amend. However, okay, there
11 isn't -- there hasn't been any -- any argument from the
12 plaintiffs, If given leave to amend, here is what we are going
13 to do. Here is how we are going to make the pleadings better.
14 Here is how we are going to allege, for example -- you know, for
15 example, the issue of our tele -- our exclusive television
16 contract. There's many, many different television stations.
17 There are competitors who have deals with television stations.
18 It's -- the plaintiffs don't have any suggestion as to how they
19 are going to say our contract forecloses the opportunities for
20 competitors to get their own television deal.

21 There hasn't been any suggestion from the plaintiffs,
22 likewise, when we do a deal with Reebok, which they say
23 forecloses the market, there's not -- there's no explanation as
24 to why -- what they're going to be able to allege that says,
25 Well, we've been foreclosed -- our competitors have been

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1 foreclosed from doing a deal with Nike or other apparel
2 manufacturers. Same thing with doing a beer -- a beer deal.
3 When you have an exclusive contract with one beer dealer,
4 there's nothing about that that forecloses with another beer
5 dealer.

6 So there's no explanation as to, Okay, you know, maybe
7 we didn't get it the first time, but we're going to amend and
8 here is what we are going to say. And all of those areas I just
9 described are substantial areas of discovery, and we don't think
10 that the defendant should have to go forward with those areas
11 until we've been heard by the Court. And each one of those is
12 expensive, and each one of those gets into our, you know, what
13 is legitimately private financial information and allows the
14 plaintiffs to go rooting around trying to come up with some
15 cause of action.

16 The same is true with the fighter contracts. We know
17 that the plaintiff -- the plaintiffs allege there's been
18 foreclosure because these contracts are in perpetuity, but, on
19 the other hand, we also know the plaintiffs have fought -- many
20 of the plaintiffs have fought for competitors. So we know that
21 that is not true, and we know that based on things that have
22 been even said in the complaint as well as what anybody can
23 observe these folks have done.

24 So the actual obligation on foreclosure is to plead the
25 size of the market and to plead the percentage or an estimate of

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1 foreclosure. And there's been no suggestion from the plaintiffs
2 that they're going to be able to do that with television, with
3 apparel, with sponsors, with venues in Las Vegas or elsewhere,
4 or even with respect to the fighters.

5 And with respect to the fighters, the other issue is
6 the market definition, for example. The Courts have been quite
7 clear, and antitrust cases are quite clear, that single brands
8 are not markets. The Courts are very, very skeptical of that.

9 And this complaint uses a term "elite" setting. And
10 how does it define elite? It defines elite as fighters who are
11 in the UFCW. It creates a circle. It comes back to the UFC
12 being a market by itself, even though we know some of these
13 fighters have fought for competitors.

14 That sort of market definition can't fly. Otherwise,
15 you can just -- you can throw out other adjectives. Fighters
16 who are really good. Fighters who are excellent. Fighters who
17 are top rate and say, Okay, that's the market.

18 Now, this argument we've -- we've made this motion.
19 And the plaintiffs haven't come forward and said, Well, if we
20 replead, all right, here's an actual economic market that we
21 would all offer in the alternative.

22 So, you know, ultimately to answer the question, will
23 the Court grant leave to replead, generally Courts liberally do
24 that. What will happen with repleading here, though, we don't
25 know because there hasn't been any explanation as to how that

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1 will cure any of that. And so --

2 THE COURT: Well, it would depend on what the district
3 judge finds deficient, if he finds deficient.

4 MR. ISAACSON: That's always the case. That's right.
5 And we're here without that guidance, but each area of
6 deficiency is significant in terms of the amount of discovery
7 that is attached to it. And the plaintiffs want to say, Okay,
8 even if one area is deficient, you have to consider the whole
9 thing together, which is what the Courts call in a monopoly case
10 the monopoly broth. You just slop it all in together and say,
11 Well, you have to look at it as a whole, and even if each piece
12 is deficient, you look at this broth together. And that doesn't
13 work, particularly when you're talking about the background
14 standard of plausibility out of Twombly and Iqbal, etc.

15 The whole -- you know, for example, the television
16 allegation that we have foreclosed the television market when
17 anyone turning on a television set can see all of these
18 different stations and can see competitors on different
19 stations. That -- that allegation is so implausible, the idea
20 that when you combine it with someone -- with something else
21 that it, therefore, becomes plausible and we get discovery on
22 the whole television sponsorship and contracts and markets and
23 revenues, that doesn't make any sense. And that's the whole --
24 that's the whole line of cases about the monopoly law.

25 THE COURT: All right. If I understand what your

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1 arguments are, a series of lawful business practices that makes
2 you good at what you do doesn't equate to antitrust violation.

3 MR. ISAACSON: That is -- what you have just said is at
4 the heart of antitrust law, Your Honor. And what they're
5 lacking is -- are allegations that are not -- other than
6 conclusory allegations, that are able to take on that principle
7 and justify the cost of discovery because they are not showing
8 that we are foreclosing competitors and not defining how we're
9 doing that in any meaningful way. There's no definition, for
10 example, of how much of television sponsors have been
11 foreclosed. There's no definition of how many apparel sponsors
12 have been foreclosed.

13 Even with respect to fighters, there is no definition
14 of the number of fighters that fall into this elite category and
15 whether our contracts, which come up for rebidding, how many
16 fighters are or are not available. Nothing like that is found
17 in the complaint.

18 Now, remember, these plaintiffs, and there's several of
19 them, have access to their own contracts without any discovery.
20 They can look at their own contract clauses. This isn't a
21 complaint that attached any of these contracts. All right. It
22 is a complaint that made general conclusions about the contracts
23 and certainly makes strong allegations about them, but doesn't
24 go through the contracts of the plaintiffs or explain the
25 plaintiffs' lives and how they've been foreclosed from working

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1 for competitors, that their contracts never came up and they
2 were unable to work for a competitor. You don't see that and
3 that level of analysis in the complaint. And if they wanted to
4 replead, they don't need discovery for that. They have access
5 to all of that right now.

6 So I don't want to go on and on, Your Honor. I think
7 our thesis is pretty simple that we will cooperate and meet and
8 confer about a lot of things that can be done. We don't want to
9 incur substantial discovery costs until the motion has been
10 decided. We think under the relevant law, which specifically,
11 you know, as you apply these days to antitrust cases where there
12 is a strong motion pending and you get to take a peak at that
13 motion, as the cases say, without prejudging it or suggesting
14 how it will ultimately come out.

15 But the one thing that should just be clear is that
16 there's going to be for purposes of Rule 1 substantial expense
17 if we move forward on -- in these various major areas. We can
18 make some progress without incurring that expense in the
19 meantime and hope that, and I assume it's correct, that we will
20 soon have a hearing on the motion to dismiss and we will get the
21 guidance that you're asking about.

22 THE COURT: Thank you.

23 And who will be arguing on behalf of the plaintiffs?

24 MR. SPRINGMEYER: Your Honor, with your permission, I'd
25 like to offer the Court some thoughts on the local district law

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1 and practice, and then Mr. Cramer will present regarding the
2 merits of the complaint, the motion to dismiss, and the
3 discovery because I'm more recently come into the case than he
4 and ask your permission to do that even though his pro hac vice
5 application is still pending.

6 THE COURT: Granted.

7 MR. SPRINGMEYER: Thank you.

8 Both based on what I perceive to be Your Honor's and
9 this district's practice and from what I've just heard from the
10 defense, I would suggest that the outcome that would serve the
11 dueling interests of Rule 1 and the defense concerns of expense
12 would be for you to deny the motion to stay, order the parties
13 to meet and confer, set up a schedule, begin the negotiation and
14 resolution of issues over a protective order, which we have
15 already begun, and electronic-stored information protocol, and
16 begin various aspects of discovery which don't turn into this
17 millions of dollars coming down on us next month bug-a-boo that
18 you just heard.

19 I think that would be an appropriate resolution under
20 the law of the district because -- as you well know, because you
21 wrote one of the leading three decisions on which we rely which
22 says that the magistrate judge must be convinced that the motion
23 to dismiss will be granted without leave to amend. Otherwise,
24 the motion to stay should be denied.

25 And I personally don't see how that's possible with

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1 this complaint. And it is a little bit ridiculous to suggest
2 that we're supposed to predict what the district judge is going
3 to say might be deficient and then pose what are solutions to
4 those deficiencies would be I guess in our reply to the motion
5 to -- in the opposition to the motion to stay or in the
6 opposition to the motion to dismiss.

7 So based on your decision in Tradebay and the
8 subsequent decisions in Rosenstein and Grand Canyon Skywalk, the
9 solution I've just suggested is my best idea for the Court on
10 how to deal with this in a way that handles all of the competing
11 interests appropriately. It might even be useful and necessary
12 to schedule a monthly or bimonthly status conference by
13 telephone because I predict we're going to have a lot of
14 controversy and a lot of strife in this case. It's being hard
15 fought and with strong views on both sides.

16 THE COURT: Have you discussed limiting the scope of
17 discovery while both sides appreciate how the district judge
18 views your pleadings?

19 MR. SPRINGMEYER: That has not been discussed in the
20 context of a meet and confer about what could we do about the
21 pending discovery requests. So that is exactly the kind of
22 thing I'm suggesting could happen under this order I've proposed
23 to the Court.

24 THE COURT: Mr. Cramer?

25 MR. CRAMER: Thank you, Your Honor. And if it pleases

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1 the Court.

2 To address Your Honor's last question, in the hallway
3 before we came in here we had a brief discussion about what
4 kinds of things could be done before the motion to dismiss was
5 decided. And one of the defense counsel had a conversation with
6 one of the plaintiffs' counsel, but -- and that was within the
7 last week. So there have been some very preliminary discussions
8 along those lines just to bring Your Honor up to date and to
9 complete the record on that.

10 Let me address Mr. Isaacson's attack on the complaint.
11 I think -- I think the key -- let me step back and explain what
12 the case is about because I think it gets lost a little bit in
13 Mr. Isaacson's argument.

14 What we have alleged -- we represent 11 UFC fighters
15 and two proposed classes of UFC fighters. And what we have
16 alleged is that the UFC has used an anticompetitive scheme
17 involving several different elements to deprive key inputs to
18 rival promoters so that those rival promoters have no ability to
19 compete with the UFC. And by the UFC's own admission, as
20 alleged in the complaint, the UFC is now the only game in town
21 for an elite professional in MMA fighting. They claim they are
22 the NFL. Everybody else is the minor leagues.

23 And what we allege is as a result of depriving the
24 ability of rivals to get access to key fighters, to get access
25 to sponsors, to get access to venues, the UFC has been able to

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1 abuse -- to gain monopoly and monopsony power and abuse that
2 power by under-compensating and mistreating the fighters.
3 That's what the case is about.

4 So let's talk about the three --

5 THE COURT: Well, you're arguing they only get a
6 fraction of what, for example, professional fighters get because
7 of the UFC's lock on the market.

8 MR. CRAMER: That is one of the arguments that we make,
9 yes. If there were competition between promotions, then the
10 fighters would get paid more. Yes, that is what happens.
11 Competition --

12 THE COURT: How many lawyers do you think are
13 competitive with you, sir? If you're good at what you do, that
14 doesn't necessarily equate to engaging monopolistic practices or
15 antitrust behavior.

16 MR. CRAMER: Of course. That is exactly right. Sadly,
17 I do not have monopoly power. I'm just little old me and there
18 are thousands of other lawyers who are competing with me, but
19 the UFC does have monopoly power and monopsony power, which
20 means they are the only purchaser of services for our clients.
21 They, by their own admission, are the major leagues. Everybody
22 else is the minor leagues.

23 So they first argue that we --

24 THE COURT: Give that as true, why is that antitrust
25 violation?

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1 MR. CRAMER: Well, it is not antitrust violation simply
2 to be a monopoly, to be good at what you do. That is certainly
3 true. What is an antitrust violation is to use the power that
4 you have to enter into exclusive agreements to prevent rivals
5 from getting access to key inputs. So, for example, if you're a
6 pharmaceutical company and you own the key -- and you have --
7 and you put trucks in front of your rival's ability to get their
8 product to market, it's illegal -- it's legal to park your
9 trucks on a public street, but you're blocking your rival's
10 ability to get to market.

11 Similarly here what the UFC has done is it has entered
12 into contracts with every single professional fighter in the
13 major leagues and put provisions in those contracts that makes
14 them essentially forever, in perpetuity. There are provisions
15 like a tolling provision where the UFC decides when they can
16 fight, and -- and if they are a champion, that they can't take
17 that championship belt elsewhere. The UFC decides when they can
18 fight, how they can fight, and everything about that.

19 And so they determine the length of that contract. And
20 for many of the fighters that contract is in perpetuity, until
21 the fighters are no longer useful to the UFC, and then they let
22 them go, and they can fight for the minor leagues. So the UFC
23 locks up all of the fighters. That's a traditional exclusive
24 dealing claim. And exclusive dealing under Tampa Electric is
25 illegal. You cannot lock up all of the inputs through long-term

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1 exclusive deals and to deprive rivals of the ability to compete.

2 And they threaten sponsors. So they threaten sponsors,
3 If you sponsor a rival promotion, if you sponsor a fighter that
4 fights for a rival promotion, you're dead to us. You can no
5 longer sponsor anyone in the UFC.

6 They enter into exclusive deals with venues at key
7 important venues. If you're a rival promotion and you want to
8 be in the major leagues and you want to compete with the UFC,
9 you need key elite fighters. You need key sponsors. You need
10 key venues. And the UFC has deprived rivals of all of those
11 things. That's what we allege.

12 And as a result of what we allege, no matter how the
13 market is defined, I mean, this -- they argue we've improperly
14 defined the relevant market. We define the market as only elite
15 fighters. It is a red herring. No matter how you define the
16 MMA market, the UFC dominates it. They have, we allege, 90
17 percent of all revenues in the professional MMA business in the
18 United States. They, by their own admission, are the major
19 leagues as a result of their conduct.

20 Mr. White, the president of the UFC, we allege has
21 admitted that through their conduct they have put their rivals
22 out of business. And we allege as a result of depriving their
23 rivals of oxygen to survive, of key fighters, of key venues, of
24 key sponsors, they impaired them so much they bought the rest of
25 them out. They bought out Strikeforce, their rival. They

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1 bought out Pride. And as a result of all of this, the UFC now
2 is the only major professional MMA promotion in the United
3 States. And it is not illegal simply to be a monopoly or a
4 monopsony, but it is illegal to enter into exclusive deals --
5 long-term exclusive deals and to threaten rivals -- threaten
6 sponsors and others from working with rivals to keep rivals from
7 coming to the market. And that's what they have done.

8 Now, Mr. Isaacson says that we have -- plaintiffs have
9 not alleged foreclosure in the TV market. There are other TV
10 stations. Foreclosure in the venue market. We're not talking
11 about the TV market or the venue market. We're talking about
12 the market --

13 THE COURT: But you want every contract they've ever
14 entered into and any discussion with anybody they've ever
15 entered into for TV broadcasting rights.

16 MR. CRAMER: Well, what we want to see is that the
17 UFC -- well, what we want to see is that the UFC has used its
18 power, its monopoly power in the business, to threaten TV
19 stations, sponsors, venues that if you work with a rival, you
20 will never work with us. And if you are a powerful company like
21 the UFC who is 90 percent of the MMA business, who admits that
22 it is the major leagues and everyone else is the minor leagues,
23 and you are out there threatening all television stations,
24 venues, fighters that if you fight for a rival, you'll never
25 work in this business again, which is effectively what we allege

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1 that the UFC is doing and has done, then there can never be
2 competition in the MMA business. And that's what we are
3 alleging.

4 Do we want the instruments of how the UFC has got the
5 lock on the MMA business? Of course we do.

6 Now, as to the arguments about the breadth of
7 discovery, Your Honor, we can deal with those issues in the
8 normal course of discovery. There will be meet and confers.
9 Your Honor will adjudicate disputes about the breadth of that
10 discovery, I'm sure, and that can be limited in various
11 different ways. We can do it in phases. There are all kinds of
12 ways that discovery can be limited.

13 But there is very little doubt that the motion to
14 dismiss will be denied at least in part. We only have one claim
15 and the UFC has argued, Well, certain aspects of the complaint
16 may disappear. We have one claim, a monopsony claim, a claim
17 that the UFC has gotten a monopsony in the market per UFC by UFC
18 fighter services, professional fighter services, elite
19 professional fighter services, and is under-compensating our
20 clients and class members for bouts and for identity rights.

21 That's one claim. And there's no motion to strike
22 anything. The claim either survives or it doesn't. And I
23 submit to Your Honor that it will survive given that it doesn't
24 matter what the relevant market is. We have alleged monopoly
25 and monopsony power.

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1 Elite is a recognized category. What we're trying to
2 do is to distinguish elite professional fighters from minor
3 leagues. It's like in baseball. There are major leagues and
4 there are minor leagues. And those products are not reasonably
5 interchangeable. They're different products. Therefore, they
6 belong in different markets. That's why it makes sense to
7 distinguish between highly-trained fighters that have notoriety
8 and can gain sponsors and fighters that are fighting in the
9 minor leagues where somebody might pay \$50 to fight in a gym
10 somewhere.

11 We're talking about the top of the sport. And that's
12 why it makes sense to use the term "elite," but it's a red
13 herring because we have alleged and the UFC has admitted that
14 they are the major leagues and they have no competition. Your
15 Honor will see that in the complaint.

16 As to the aspect of whether each of the aspects of the
17 scheme that we've alleged has sufficiently foreclosed rivals,
18 the UFC is wrong in how they analyze that. First of all, the
19 law is in the Ninth Circuit and the Supreme Court that the
20 scheme needs to be taken as a whole, that the Court needs to
21 look at the entire anticompetitive scheme, all of the conduct
22 together, to see whether that forecloses rivals, makes it more
23 difficult for rivals to compete.

24 THE COURT: Is it your argument that a series of lawful
25 business practices that are effective can constitute

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1 cumulatively antitrust behavior?

2 MR. CRAMER: Yes, and that's been held by Courts for a
3 long time. That's -- I mean, it has long been held that conduct
4 that is legal when taken by an entity that is not a monopolist
5 can be illegal and violate the antitrust laws when it's taken by
6 an entity that is a monopolist. What the antitrust laws and
7 Section 2 of the Sherman Act in particular is concerned about is
8 the abuse of dominance, is that dominant entities once they
9 become dominant, then they can stay dominant forever if they're
10 able to lock up the market.

11 If the UFC is now able to prevent every elite fighter
12 from fighting for a rival, to prevent every key sponsor that
13 wants to sponsor a professional MMA or many key sponsors from
14 sponsoring a rival or a fighter that deigns to fight for a minor
15 league rival, if they can lock up all of the key venues, there
16 will never been competition in the MMA business, ever. And
17 that's what the antitrust laws are concerned about. They are
18 concerned about dominant entities maintaining dominance by doing
19 things that would be legal if they were being done by someone
20 who is not a monopolist.

21 If there were 50 promotions and some promotion locked
22 up one venue for a year, that would not be antitrust violation
23 because that -- that one out of 50 promoters doesn't have
24 monopoly power, but when that's done by a monopolist who locks
25 up all of the key venues, who locks up all of the key fighters,

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1 that can be antitrust violation and has long been deemed an
2 antitrust violation.

3 And as to foreclosure, just to make this final point on
4 foreclosure, the UFC and Mr. Isaacson make it appear as if what
5 plaintiffs need to show is that the scheme we have alleged
6 eliminated all competition. We don't need to show that. What
7 the law is is that an antitrust scheme needs to foreclose a
8 substantial line of commerce effectively, not all commerce, just
9 a substantial line of commerce.

10 So if the UFC has engaged in a scheme to prevent rivals
11 from getting access to key parts of the market, that can be and
12 has been held to be an antitrust violation. And we have alleged
13 that the scheme that the UFC engaged in did substantially
14 foreclose rivals from competing with the UFC no matter how that
15 market is defined, whether it's elite fighters or all
16 professional MMA fighters. By their own admission, they are the
17 major leagues. There is nobody else.

18 We have alleged they have 90 percent of all of the
19 revenues in the United States from professional MMA fighting.
20 They are a monopsonist. We have alleged that the reason why
21 they are a monopolist and monopsonist is the cost of the scheme
22 they have engaged in by locking up the fighters, locking up the
23 venues, threatening the sponsors, and buying out those rivals
24 that have been weakened.

25 So the complaint, Your Honor, through this preliminary

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1 peak which has now been a little bit longer than preliminary we
2 believe will survive; that it will survive in whole because we
3 only have one claim. And the case has been pending, Your Honor,
4 since December of last year. It's gone through -- we filed it
5 in the San Jose. We had a motion to transfer that was briefed
6 and argued and now it's been sent here, but the case has been
7 going on for months and months and it's time we believe for
8 discovery to begin.

9 If you have any questions for me, I'd be glad to answer
10 them.

11 THE COURT: No. Thank you.

12 This is your motion, counsel, you get the last word,
13 but make it brief, please. I've got a courtroom full of people
14 waiting for the next hearing.

15 MR. ISAACSON: Appreciate that, Your Honor. I think
16 we've made clear that whether or not there's a motion to stay or
17 any order from the Court, we will move forward with the
18 plaintiffs on the protective order, ESI, written discovery
19 objections. And if the Court wants to have a regular conference
20 call, then that's fine by us as well to see if -- in case the
21 plaintiffs are unhappy with the progress that we're making on
22 that. We have no objection to that. I don't -- whether that's
23 in a Court order or not in a Court order, we're willing to do
24 that.

25 The motion to stay is about what is said in the motion

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1 to stay, whether we actually begin to cat -- produce large
2 categories of documents. Other than the hallway, there were
3 meet and confers between Mr. Cove and their colleague,
4 Mr. Saveri. Plaintiffs have not said, Well, produce this
5 category of documents, but not that category of documents. We
6 just face the entire range of all of the categories of
7 documents. And I have some sympathy for them that it's hard to
8 figure out the inexpensive set of documents in this case. There
9 isn't a clear category of documents in television, fighters, or
10 etc. that would be inexpensive and that would make sense to move
11 forward.

12 Mr. Cramer's presentation, I'll just say briefly, makes
13 clear why this complaint is in jeopardy because it is high-level
14 slogans and anticompetitive schemes directed towards inputs,
15 lines of commerce have been precluded, inputs have been
16 precluded, but nothing in his presentation says how many of the
17 television inputs have been precluded, how many of the sponsors
18 have been precluded, how many of the venues have been precluded,
19 how many of the fighters have been precluded.

20 On the fighters he said various things. The champions
21 can get extended. Well, that's a champion. Then he said many
22 are locked up in perpetuity, and then he said we lock up all the
23 fighters. Right. Three different things. You don't have --
24 and focus on that strongest sentence, lock up all the fighters.
25 Right. What -- which fighters and how are we defining those?

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1 He says it doesn't matter because we have 90 percent of
2 all of the revenues, but of course it matters. He is arguing a
3 monopsony case about the employment market, and we don't have a
4 coherent definition of who the employees are and one that meets
5 the standards for defining an antitrust market. And what we
6 know about those fighters is several of them from the plaintiffs
7 have worked for -- have worked for competitors.

8 One of the other things he says is that the UFC
9 threatens television stations. Now, threats is sort of an
10 unusual word, but let's take that as true. But then how do we
11 define the threat? Well, if you work with a competitor, we're
12 not going to go on your television station. You know, Bellator,
13 who -- the former owner -- the former executive from Strikeforce
14 which is owned by Viacom is on Spike TV. You don't have -- the
15 UFC says to MSNBC or Spike or anybody, Boy, if you don't work --
16 if you work with them, you can't work with us. That's not a
17 threat and it is not a plausible way of controlling a market
18 because television stations get to say, Fine, we'll work with
19 these other folks. That's nice of you to tell us that. It's
20 not a plausible explanation.

21 Ultimately, what they want to rely on is high-level
22 rhetoric to say, Look, a UFC executive used strong terms to say,
23 These other guys, they're small time. They're minor leagues.
24 Well, that's the way that competitors talk about one another and
25 probably a little bit more so when you're in the world of MMA

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1 because this case will have word -- will have words about war
2 and fighting and conquering and crushing, and that doesn't
3 establish an antitrust claim.

4 The -- one of the plaintiffs after they failed to
5 prevail on the motion to transfer Tweeted out afterwards,
6 innocently, So we go to hell to fight the devil in his home
7 town, off to war. That's normal talk in this industry. It
8 doesn't make any claim of wrongdoing, and if we said that, it
9 wouldn't make an antitrust claim.

10 So --

11 THE COURT: No, I understand trash talk doesn't equate
12 to a pleading.

13 MR. ISAACSON: Right. Right. And that would be --
14 that would be -- you know. So we think that this case is ripe
15 for some commonsense steps to move forward. When Judge Boulware
16 decides the case, then we'll know where the case stands. It's
17 not -- he says it's ridiculous to predict what Judge Boulware
18 will do. It's not ridiculous to say, We've made a motion. And
19 you can respond to a motion to dismiss and say, We think our
20 complaint is sufficient, but, Judge, if it isn't, we would
21 replead and add these facts. That's not what's happened here.

22 And it's also incorrect to say that, Yes, we have one
23 claim. That's the title. It's incorrect that the district
24 court can't narrow the allegations that are going to be allowed
25 to support that claim. The claim itself, while being a monopoly

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1 claim, one claim can continue to exist, but on much narrower
2 grounds which would have a major effect on discovery. It isn't
3 the case that -- that the district -- or that Judge Boulware
4 won't be able to narrow this case and narrow the discovery.

5 THE COURT: Thank you, counsel.

6 I have carefully reviewed your moving and responsive
7 papers and both sides did an admirable job of stating your
8 respective positions, but having gone through the exercise, I am
9 not convinced that the plaintiffs can state no claim on which
10 relief may be granted. In this case I am going to deny the
11 motion for stay. I am going to require, however, that the
12 parties meet and confer and submit a proposed form of
13 confidentiality and protective order within 30 days as well as
14 an ESI protocol. I would strongly urge you to discuss in detail
15 issues pertaining to ESI. That can be one of the most difficult
16 issues to address, especially if it's not done at the initial
17 stages of the case.

18 I'd also urge you to consider nontraditional methods of
19 searching for ESI instead of key words or custodian searches
20 which are expensive and the data shows not particularly
21 accurate. I am going to impose restrictions on discovery, and
22 I'll consider phasing or limiting the scope while the district
23 judge addresses your motion to dismiss. And I'll hold periodic
24 status and dispute resolution conferences to keep this case
25 moving in a cost-effective manner.

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1 And I'm going to set this for hearing in 60 days. By
2 then, hopefully, you will have a decision on the dispositive
3 motion if the case survives. In the meantime I expect you to
4 make some preliminary progress. And I expect plaintiffs to take
5 a very hard look at those very broad requests that you have
6 submitted to the defendants in this case to see if you can reach
7 an agreement with respect to a category of information that
8 makes sense or phasing of the rolling production in discovery in
9 a way that is cost effective.

10 And at the end of the day the plaintiffs have an
11 incentive not to incur more costs than the case warrants either.

12 MR. SPRINGMEYER: Thank you, Your Honor.

13 MR. ISAACSON: Thank you, Your Honor.

14 MR. CRAMER: Thank you, Your Honor.

15 COURTROOM ADMINISTRATOR: Your Honor, we'll set this
16 matter for continued hearing on Tuesday, September the 29th,
17 2015, at 9:30 a.m. in this courtroom.

18 THE COURT: And I'll require you to provide me with a
19 joint status report the Friday before letting me know what --
20 the issues you've discussed, whether you've reached agreement
21 on, whether you have disagreements on, and any discovery
22 disputes that require the Court's immediate resolution to move
23 the case forward with sufficient specificity to avoid the
24 necessity of formal briefing and the motion back and forth. I'm
25 not going to preclude you from filing, of course, appropriate

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1 discovery motions, but to the extent we can, I expect that the
2 routine decisions that are discretionary calls by the Court
3 should be done by a joint status report that accomplishes two
4 objectives, one, it gets you to talk to each other and, two, to
5 articulate your respective positions in writing in a format that
6 avoids the 35- or 36-day turnaround for briefings.

7 MR. ISAACSON: Yes, Your Honor.

8 MR. CRAMER: Your Honor, one request.

9 THE COURT: Yes, sir.

10 MR. CRAMER: Is the time of the hearing. I'm actually
11 going to be in trial in this courthouse in the Oracle Remedy
12 matter that you're familiar with.

13 THE COURT: Lucky you.

14 MR. CRAMER: Yes, and -- which runs until about 1:30 I
15 think every day. So if the hearing were later in the afternoon,
16 I would be able to participate.

17 THE COURT: Sure. Mr. Miller -- anybody else have any
18 scheduling issues or glitches that you want to address?

19 MR. ISAACSON: I'd have to look at my calendar, Your
20 Honor, but ...

21 THE COURT: Okay. And what do we have -- do we have a
22 settlement -- I have settlement conferences in the afternoons
23 many times, so ...

24 COURTROOM ADMINISTRATOR: Yes, Your Honor. We do have
25 an ENE scheduled for 1:30 p.m. that afternoon. But, Your Honor,

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1 the whole of Monday, September the 28th, is available on our
2 calendar.

3 THE COURT: The only problem with that is that's my
4 first day back after being out of the district. And no offense,
5 folks, but I suspect you're going to be a fair amount of work.
6 What do we have later on in the week?

7 COURTROOM ADMINISTRATOR: Your Honor, we have another
8 settlement conference on Wednesday, September 30th. That is a
9 morning setting. And, Your Honor, it appears that Thursday,
10 October 1st, and Friday, October 2nd, are blocked out on the
11 Court's calendar.

12 THE COURT: Could we do it Wednesday afternoon, say, at
13 2 o'clock? Would that work for you folks?

14 MR. ISAACSON: Certainly, Your Honor.

15 THE COURT: And if you do have a problem, just contact
16 my courtroom deputy jointly and propose some alternatives in the
17 ballpark, and we'll work with you. Okay?

18 MR. CRAMER: Thank you, Your Honor.

19 THE COURT: Thank you.

20 (Whereupon proceedings concluded at 10:46:51 a.m.)
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I, Patricia L. Ganci, court-approved transcriber, certify
that the foregoing is a correct transcript transcribed from the
official electronic sound recording of the proceedings in the
above-entitled matter.

<u>/s/ PATRICIA L. GANCI</u>	<u>AUGUST 25, 2015</u>
Patricia L. Ganci	Date